IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 368 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N D SARVARIA

Versus

SECRETARY

Appearance:

MR DS VASAVADA for Petitioners

No one has appeared on behalf of Gujarat Electricity Board despite service.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/02/2001

ORAL JUDGEMENT

1. The petitioners herein came with the case that petitioner No.1 had joined the service of the Board as Junior Engineer on 4.12.74. He became due for promotion with effect from 20.4.83,but for reasons best known to the Gujarat Electricity Board the petitioner No.1 was

denied promotion from due date i.e. 20.4.83. Petitioner No.1 was, however, promoted as Deputy Engineer by order dated 3.12.88 vide Annexure "A". The petitioners claim that petitioner No.1 is entitled to be promoted as Deputy Engineer from 20.4.83 i.e. the date from which the person junior to him had been granted promotion to the post of Deputy Engineer. The petitioners have stated that in the year 1983, the promotion was denied to petitioner No.1 on the ground that a departmental inquiry was pending against him. A representation had also been made by the petitioner No.1. In reply to this representation, a communication dated 28.2.85 was sent to the petitioner No.1 informing him that departmental proceedings were pending against him and that he had not been granted promotion from due date only because of the fact of the pendency of the departmental proceedings. This reply dated 28.2.85 has been annexed with the petition as Annexure "D". The contents of this reply, as per Annexure "D", are as under:-

"With reference to the above I have to state that the case of promotion to the post of DE of Shri N.D.Sarvaiya, J.E. of Amreli Division is not cleared as there is pending departmental action against him. As soon as the departmental action is over, a report to that effect with a copy to the punishment order awarded to him may be sent so that his case can be immediately processed. It is only due to this that he has not been cleared for promotion and therefore you may give a suitable reply to him on the above lines."

The petitioners have stated in para 8 of the petition that it is true that there were adverse remarks in the Confidential Reports of the petitioner No.1 for the years 1980, 1981 and 1983, but these adverse remarks were of trivial nature and since the criterion is seniority cum merit, the respondent did not consider those adverse remarks so as to reject the petitioner No.1's candidature and the only ground for not granting the promotion was the factum of the pendency of the departmental proceedings. The petitioners go on to state that petitioner No.1 was issued a charge-sheet on 31.7.82 and the petitioner No.1, therefore, filed Special Civil Application No.4066/86 and during the pendency of that Special Civil Application a show cause notice was issued on 31.7.87 and the final order was passed by the authorities of the respondent on 11.3.88 and the order says that the petitioner No.1 was strictly warned and even against this order of strict warning an Appeal was preferred on 3.5.88. Nothing has been heard thereafter by the petitioner No.1 and the fate of this Appeal is not

known. The petitioners go on to say that the petitioner No.1 had approached the authorities of the respondent by filing representations claiming promotion, one of such representation being dated 8.5.90, but the same has not been replied. Special Civil Application No.4066/86 was disposed of on 30.3.88 vide Annexure "F". Para 2 of the order dated 30.3.88, copy at Annexure "F", shows that the counsel for the Board had stated before the Court that the inquiry which was pending against the petitioner No.1 was over and he had been held guilty of the charges levelled against him, but he had been warned to be more careful in future and that the petitioner No.1's case for promotion for higher post shall be considered in accordance with law. The Court found that in this view of the matter, the petition cannot survive and the petitioner,if aggrieved by the order of punishment imposed upon him, may challenge the legality and validity of the same before appropriate forum. The petition was disposed of as having become infructuous. The petitioners have also raised a grievance that the adverse remarks against the petitioner No.1, which are of trivial nature, had not been recorded in accordance with the procedure prescribed in Establishment Circular No.288, the copy of which has been annexed as Annexure "G". On the aforesaid factual matrix the petitioners have prayed that petitioner No.1 be granted promotion as Deputy Engineer from due date i.e. 20.4.83. In sum and substance, the petitioner No.1's claim is for ante dating his promotion as Deputy Engineer to 20.4.83 from 3.12.88.

2. I have heard learned counsel Mr. Vasavada for the petitioners and have gone through the pleadings and the documents annexed therewith. It may be stated that this petition has remained pending in this Court for a period of more than of 10 years by now, but the respondent Board has not cared to file any reply and no one has appeared on behalf of the Board today at the time when the case was called out and heard.

3. The petitioner No.1 has been promoted as Deputy Engineer from 3.12.88 as per Annexure "A" and the reply to the petitioner No.1's representation i.e. Annexure "D", relevant part of which has been quoted in extenso in the earlier part of this order, shows that the only ground on which the petitioner No.1 was denied promotion in 1983 was the factum of the pendency of the inquiry at the relevant time. The contents of the order dated 30.3.88 passed by this Court show that this inquiry only resulted into a strict warning to the petitioner No.1 and no punishment was inflicted. Warning as such is not a prescribed punishment. What were the exact adverse

remarks recorded against the petitioner No.1 for the year 1980, 1981 and 1983 are not known and all that the petitioner No.1 has stated is that these adverse remarks were of trivial nature and statement was made on behalf of the respondent Board before the Court on 30.3.88 in Special Civil Application No.4066/86 that the petitioner No.1's case for promotion to the higher post will be considered in accordance with law and it appears that only thereafter he was promoted as Deputy Engineer by order dated 3.12.88. In this view of the matter,it appears that the petitioner No.1's promotion as Deputy Engineer has not received a fair consideration and whereas he was not cleared for promotion in 1983 on account of the pendency of the inquiry and such inquiry has not resulted into any punishment to him and he has been subjected to a warning only, the petitioner No.1 has a right of re-consideration for change of date and for ante dating his promotion.

4. The Respondent Board is, therefore, directed to re-consider the petitioner No.1's case for promotion to the post of Deputy Engineer in the year 1983 or any other year earlier than 1988 in accordance with law. In case petitioner No.1's representation against the adverse remarks for the years 1980, 1981 and 1983 is still pending and in case his Appeal preferred on 3.5.88 against the order of strict warning is also pending, the same shall also be decided before the re-consideration of his candidature for promotion from 20.4.83 as claimed by him and thereafter on the basis of reconsideration appropriate orders in accordance with law shall be passed as early as possible, but in no case later than a period of three months from the date the certified copy of this order is served upon the concerned authorities of the Board. In case, as a result of the reconsideration, the petitioner No.1 is found to be entitled to be promoted from 20.4.83 or any date earlier than 3.12.88 and he is so promoted, he shall also be entitled to all consequential benefits.

4. This Special Civil Application is accordingly allowed with the directions, as above. Rule is made absolute. No order as to costs.

(M.R.Calla,J)